

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In re Petition of |) | |
| |) | |
| INTERNET VENTURES, INC. |) | |
| INTERNET ON-RAMP, INC. |) | |
| |) | |
| For Declaratory Ruling that Internet Service |) | Case Identifier CSR-5407-L |
| Providers are Entitled to Leased Access to |) | |
| Cable Facilities Under Section 612 of the |) | |
| Communications Act of 1934, as Amended |) | |

To: The Commission

Affidavit of William Shapiro

1. My name is William Shapiro and I am the Telecommunications Planner for the Vermont Department of Public Service, the state agency authorized to act on behalf of the Vermont public on cable matters.

2. I hold a Master of Professional Studies degree in Interactive Telecommunications from New York University. Before joining the Department of Public Service I was with AT&T for eight years. While with AT&T I also worked as a Systems Consultant assigned to the Time Incorporated, NBC and General Electric national accounts. From 1992-94 I held the position of Electronic Information Specialist with AT&T where I wrote, edited, produced and marketed on-line news and information services within the corporation. I programmed a search engine to create personalized news feeds for managers in AT&T Corporate Strategy, Bell Labs, Government Affairs and other divisions. I also currently produce the Telecommunications Website for the Department. Before joining AT&T I worked six years for NBC News in New York and served on the East West Center's Telecommunications Policy Council and as Manager of the PEACESAT Project in Honolulu. My cable industry experience includes, but is not limited to, experience as a Systems Consultant for AT&T assigned to the NBC and Time-Warner national accounts, which included consulting for all of Time Warner's multiple cable systems. I have also had experience with TV and independent video production as, among other things, News and Features Assistant for NBC News, New York (1972-77), producer of public access programming on MCTV, NYC (1974, 1975, 1989) and assistant producer of various shows for Alternate Current, NYC, including UltraQuiz, a hit show on Japanese television.

3. I am responsible for producing the Vermont Telecommunications Plan, which assesses the history and status of the telecommunications industry and the changes and developments in technology, regulation, infrastructure, and

competition that characterize the industry. I have also testified in several dockets before the Vermont Public Service Board, including Docket 6101, concerning the renewal of franchises for Mountain Cable Company and Better T.V., Inc. of Bennington (hereinafter referred to collectively as "Adelphia").

4. Television is in the midst of a sea change. It is moving from an analog to a digital format. With digital transmissions, TV moves into the computer age. Digital TV is TV recorded and transmitted digitally; TV that can come with web pages or come from web pages. It is enhanced with other media elements and interactivity. It can be watched on a TV or a PC. Adelphia cable is part of this sea change. It is upgrading to a digital transmission platform, to transmit digital television and Internet protocol. With an eleven-year window for determining future cable-related community needs, it is absolutely necessary to understand that we can not think of cable TV as it has been in the past--delivering only the cable TV channels we know in the formats we grew up with--but instead we must recognize cable TV as it is and as it will be--delivering all that we are familiar with, plus new television formats we are only beginning to see emerge on the cable dial. These new formats include digital television with accompanying data streams, television for viewing on personal computer monitors, and television from the cable's Internet channels--from the NASA channel, the Washington state government channel, or the Victoria's Secret channel. Additionally, in the near future, considerable intelligence available from increasingly powerful microprocessors will reside in the cable set-top box or in the TV set itself, enabling not just embedded cable modem capabilities for Internet connectivity, but also other significant new features based on the computer capabilities coming to the box and television.
5. Moreover, as cable systems come to be comprised primarily of digital technology, there is no longer any scarcity of channels. In Vermont, total channel capacity after Adelphia completes its rebuild will be 413 channels. (The additional 200 MHz digital capacity gained with rebuild yields 33 6 MHz channels, when compressed at a 10 to 1 ratio = 333 channels + 80 analog channels = 413 channels.) Over the course of an eleven year franchise, this number of channels is expected to increase significantly with improved compression techniques and eventual digitalization of the analog channels, yielding ten or more digital channels from each former analog channel's bandwidth. Even the bandwidth hungry High Definition Television (HDTV) digital format fails to fill a single 6 MHz analog channel; four HDTV signals can be transmitted over a 6 MHz channel.
6. According to the National Cable Television Association Guidelines, presented by Adelphia in response to discovery in Vermont PSB Docket 6101, cable reduces the time to transmit a single 1 Mb graphic image from 5 minutes over a telephone line with a 28.8 kb/s modem to 1 second using a 10 Mb/s cable modem.

According to the guidelines, "[t]he cable industry's broadband network enjoys a significant advantage over competitive alternatives for accessing the vast amounts of information available on the Internet."

7. The cable industry's broadband network is unlikely to experience any direct competition in the near future. DSL is not going to be immediately available in most of Vermont anytime in the near future. The DPS has sent 45 questions on DSL to every local exchange carrier (LEC) in Vermont. Current plans to offer DSL service in Vermont are limited to Vermont Telephone Company, which plans to offer the service throughout its relatively small service territory, and Bell Atlantic ("BA"), which plans to offer it only out of its Burlington and Essex switches. Other companies express interest but their plans remain speculative. None of the companies in Vermont have filed tariffs with the FCC, a necessary step prior to offering service, inasmuch as DSL service falls under interstate jurisdiction.
8. Several technical problems have also been identified which will make DSL deployment problematic. Service provisioned out of the central office is limited to distances of 18,000 feet and will not travel over digital loop carriers (DLC). Twenty-five percent of BA lines travel over DLCs and thus are not eligible for DSL. Old copper may also be problematic and limit the number of lines eligible for DSL service. Indications are, therefore, that DSL deployment will be limited and the cable platform will be the only available broadband drop into most cable homes in Vermont for the foreseeable future. Most residents living in Adelpia territory will be able to have broadband access from Adelpia, but outside of downtown areas in the larger markets, few Vermonters can expect an alternative broadband service over copper in the next five years.
9. The Web appears to be the site of the interactive multimedia future. Interactive cable television now appears aimed at the Internet market. Intel has developed InterCast, which is like a digital version of videotex. Intel is working with NBC, PBS and others to provide Web pages over the vertical blanking interval (VBI) of a regular broadcast or cable television transmission. InterCast could provide statistics with sporting events, recipes with a cooking show, print information with a news report, or coupons with advertisements. InterCast is becoming a factor in the new digital television media. PBS ran its first InterCast programming on November 10 and 11, 1998, in a Ken Burns documentary about Frank Lloyd Wright that featured accompanying data streams for the personal computer that were transmitted simultaneously with the show. The PBS Kids Channel launches in September 1999 with InterCast capabilities as a basic component of the new programming. The programming is aimed at PCs that will be equipped with an Intel receiver card coming to retail suppliers this summer. An alternative to a set top box, it will enable PCs to receive both the digital television transmissions and the accompanying data streams. (See Reveaux, Tony, "Kids Lead PBS' Digital Charge," TV Technology, 4/7/99, p. 18.) Beyond InterCast, set-top boxes are

under development that will enable televisions to also display the web pages. Some set-top boxes will incorporate Microsoft's Web TV capabilities to provide this capacity. Eventually, digital televisions will incorporate the capabilities inside the set itself, eliminating the set-top box in a fashion similar to cable-ready TVs, which eliminate the need for today's set-top boxes.

10. Producers are already broadcasting from web sites. Most importantly, a new market is opening up for special video transmissions directed at Internet users that could utilize leased access channels for Internet video broadcasts. Several examples of this new market exist. First, cable systems are developing their own platforms for delivering video to the PC desktop. Comcast Cable is involved in an @Home trial that transmits its own selection of movies and television programming direct to the @Home customer's PC. Second, other potential independent IP video programmers are already pursuing this nascent application; Hughes, the owner of DirecTV, a DBS provider, "is in negotiations with Broadcast.com to provide its current DirectPC satellite Internet service users with custom tailored programming....Broadcast.com has twice before worked with DirectPC on special projects. The latest, a special 400 kbps video feed of a Forbes magazine event designed specifically for DirectPC users, took place earlier this month." (Bannan, Karen J., "Hughes Beams Up Two-Way Satellite," Inter@ctive Week, March 22, 1999, p. 7.) Similarly, PerKInet has a deal with TriMarc Holdings that provides movies for viewing over the Internet video platform to users of its service, carried by Cox cable, in Eureka, California. Third, new video formats based on IP can be used in ways that traditional NTSC (National Television Standards Committee) standard format video cannot. One leading brand, Cisco's IP/TV, is a comprehensive "client server software application that transmits video programs, both live and pre-recorded to desktop PCs over enterprise IP networks." It is extremely bandwidth efficient and works well over 10 or 100 Base T Ethernet, and cable modems. Using IP Multicasting, it can "transmit a scheduled video broadcast to an unlimited number of viewers without straining network performance." It enables viewers to type in questions and it can broadcast Powerpoint slide presentations alongside video images of a speaker, for example.
11. Television and the internet have already begun to converge. InterCast and Intertainer are examples of TV beginning to look like Internet, while broadcasts of shows like Doogie Howser, M.D. over the Web clearly has the Internet looking like traditional TV. From a technical sense, every website is a potential broadcast television site. For example, from a viewer's standpoint, a live webcast CSPAN's website is the same as watching CSPAN on TV, except that one displays on a computer screen, the other on a TV screen. Viewing CSPAN from the website over Adelphia's high speed 8Mb/s cable modems, the signal received through a Pentium III computer is displayed on a Sony Trinitron computer monitor as Analog RGB, MPEG-2, 30 frames a second, full screen video. Viewing CSPAN from Adelphia's digital cable television platform, the signal input received on a

Sony Trinitron television monitor is also Analog RGB, MPEG-2, 30 frames a second, full screen video.

12. Cable internet service is video programming; there can be no doubt. the Internet offers a significant and substantial amount of live and on-demand video "programming provided by, or generally considered comparable to programming provided by a television broadcast station." (Section 602 of the Communications Act.) Dobie Gillis is on weekday mornings at <http://www.broadcast.com/television/shows/dobiegillis/>. NASA TV transmits a live video feed 24 hours a day on <http://www.broadcast.com/events/nasa/>. CSPAN can be watched on cable TV or over the Internet at <http://www.cspan.org/>. Statehouse proceedings in the state of Washington are available for viewing at <http://www.TVw.org> . See <http://www.broadcast.com> for listings and links to video programming available online. Every website has the potential for its own TV broadcast and the list of channels is growing daily and is certain to far exceed that of cable television. That the Internet is also used for a multitude of other applications does not detract from its significance as a platform for broadcasting video programming to a global audience.
13. Broadband Internet can provide Vermonters with access to video programming that Vermont's current cable operators do not provide. For example, international broadcasts and broadcasts from most regions outside of Vermont are not offered by cable operators. The availability of such video programming from Internet providers will contribute greatly to the diversity of programming provided in Vermont and will help keep Vermonters in touch with other regions of the globe.
14. It is very important for the community to be assured of an open, decentralized and competitive Internet, with a standards-based general purpose platform. In an openly competitive Internet, service providers must compete for users' business based on pricing, services and support and users are not constrained in their use of the Internet in any way by limitations set by the service provider. In Vermont, as elsewhere, it is crucial that no one cable company controls the throttle for Vermont's broadband Internet engine. Cable companies are building a closed broadband network to capitalize on the profits of being a gatekeeper and to limit competition for its customer base. If allowed to proceed unabated, there will be only one choice for broadband Internet service provision in Vermont-the provider chosen by the cable operator for its customers.
15. In Vermont, Adelphia is "an Internet Service Provider and a Web Presence Provider" according to the Adelphia Power Link Service contract, posted online at the following location: (http://powerlink.adelphia.net/service_contract.html). To purchase the Web presence (i.e. their cable modem platform broadband conduit) a customer must also purchase their Internet Service from Adelphia's

Powerlink brand service. No other ISP will be able to offer service via Adelphia's conduit.

16. The reluctance of cable operators to address third party access arrangements constitutes an undue preference conferred by the operators on themselves with respect to the retail Internet access service they are providing to residential and business customers. In effect, they will have a monopoly on interactive broadband services for the immediate future. This is contrary to Telecommunications Act requirements for technological neutrality and a level playing field for competition. This fails to meet present and future needs of the Vermont community for an open, standards-based general-purpose platform. Instead, it creates a new model, where the use of cable operator's high speed access pipeline is tied to the content and services that operator sells.
17. A closed broadband Internet system could potentially limit free speech, according to the Telecom Policy roundtable's FAQ on open Broadband Access (March 99, p. 2). That FAQ states: "in a gatekeeper mediated Internet, the service provider will be able to exert extraordinary editorial control over content. Gatekeepers will be able to subjectively select the information placed on its portal, limit the subject matter in its chatrooms and other forums, censor content of certain web pages, place restrictions on email, or even limit a user's ability to access certain Internet sites....This specter has already presented itself in the case of cable modem service provider @Home....@Home prevents users from downloading more than 10 minutes of streaming video--simply because they believe that Internet quality streaming video competes with traditional cable television service. @Home's latest service agreement also forbids using the @Home service for 'business purposes'--which includes checking your office e-mail." Telecom Policy roundtable's FAQ on open Broadband Access (March 99, p. 2)
18. Plans for a closed Internet system will have an adverse effect on Vermont communities. Gatekeeper control will limit the ability of local businesses to advertise and establish an online presence in their community. Local civic and community groups will find it more difficult, and more expensive, to share important information with local citizens. In Vermont, Adelphia's plans give most Adelphia users a choice only between a narrowband 28.8 kb/s telephone modem service from the ISP of choice and the broadband 10 Mb/s cable modem service from Adelphia. The broadband service is fundamentally and intrinsically an improved Internet experience over the narrowband service, as indicated by the NCTA's speed comparisons offered above. If consumers buy the latest hardware, a Pentium III computer, they will not be able to take advantage of its full capabilities for the Internet unless they have a 1.5 Mb/s connection to the Internet (Steinert-Threkeld, Tom, "Will Made for Net Chip Matter?" Inter@ctive Week, 2/22/99, p. 62.) Where local ISPs cannot offer broadband service they will have a difficult time competing with the Powerlink service, which is competitive in price with the combined costs of a second phone line and Internet service from the narrowband service provider. Local Internet service providers, with an interest in

local content, will likely be squeezed out as the cable company establishes a huge, vertically integrated monopoly. Without competition to keep prices low and service quality high, many Internet consumers will be at the mercy of the cable company. Separating the content from the conduit has been a consistent tenet of regulatory policy in this country for many years. Just as consumers have a choice of ISP's, telephone services and almost every communications service, so should they have a choice when it comes to high-speed, broadband Internet. A competitive market is the single most important factor in assuring that consumers will receive fair pricing, high product quality and satisfactory product availability.

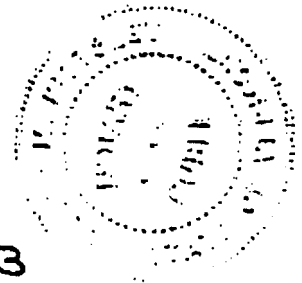
19. Technically, connection of ISPs to cable systems is feasible. Canada has mandated that cable companies offering Internet service must provide access to non-affiliated third party providers of internet service. Canada is relevant because both US and Canadian cable Internet providers will be operating under the same DOCSIS cable modem platform standards (explained below). So what works for Canadian systems will technically work for the American systems. Moreover, GTE has conducted a trial project demonstrating the technical ease of offering open access to alternative ISPs over its cable modem platform. According to the WSJ (6/14), GTE used a router based solution to enable end users access to the Internet via multiple ISPs. According to CNET News (<http://www.news.com/News/Item/0,4,37788,00.html>) (also on 6/14) users were able to connect to the Internet via GTE's ISP, or via AOL or Compuserve. Refuting the idea that this is technically difficult, CNET quoted GTE VP Barr as stating that "It isn't. It's peanuts." Thus, even in the United States, providers have demonstrated the technical feasibility of ISP access to cable systems.

By William Shapiro

Subscribed and sworn before me this 13th day of July, 1999.

Susan M. Pittsley
Notary Public

My commission expires: February 12, 2003



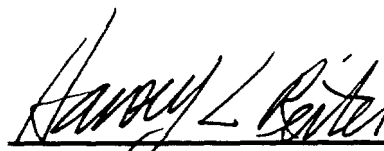
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon:

INERNET VENTURES, INC.
INTERNET ON-RAMP, INC.

William D. Freedman
Nadja S. Sodos-Wallace
Gurman, Blask & Freedman, Chartered
1400 Sixteenth Street, N.W.
Suite 500
Washington, DC 20036

Dated at Washington, D.C., this 13th day of July, 1999.



Harvey L. Reiter

1750 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 393-5710

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Inquiry Concerning High-Speed
Access to the Internet Over
Cable and Other Facilities

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GN Docket No. 00-185

AFFIDAVIT OF STEPHEN HEINS

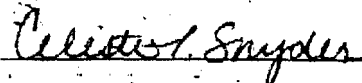
Affiant, being duly sworn, states as follows:

1. My name is Stephen Heins. I am Director of Marketing of NorthNet, an internet provider service (ISP) located in Oshkosh, WI and serving a seventy mile corridor of northeastern Wisconsin.
2. NorthNet competes with Time Warner in the provisioning of Internet Service. Without access to cable modem service from Time-Warner's northeastern Wisconsin regional office located in Kimberly, Wisconsin, NorthNet will be unable to provide high speed internet service in those areas where DSL service is unavailable. At present, 90 percent of the areas served by NorthNet are not accessible via DSL service.
3. On March 27, 2000 NorthNet has officially requested that Time-Warner provide it cable modem service, but NorthNet's requests, which actually began on August 27, 1999 have either been ignored until August 1, 2000, and after that Time Warner offered service on terms that are grossly less favorable than those it implicitly offers to itself in Time-Warner's Term Sheet.
4. Attached to this affidavit are copies of my correspondence with Time-Warner, detailing the requests made by NorthNet and the responses to those requests. In addition, I have submitted
5. To the FTC and the FCC, Open Letters and a detailed Business Model for Non-Discriminatory Open Access which are also attachment.

By


Stephen Heins

Subscribed and sworn to me this 30 day of November, 2000



Notary Public

My commission expires Dec. 1, 2002.

Open Letter to the FTC and the FCC

Dear Ladies and Gentlemen,

As the Open Access agreements are being negotiated between AOL/Time-Warner and two other National ISPs (Earthlink and Juno), I think it is worth mentioning two important issues effecting small to medium sized ISPs: (1) an ***One-Size-Fits-All Open Access Agreement is not possible***, especially given the current financial market conditions and the national ISP business model; and, (2) these negotiations are taking place on a secret basis, which makes it impossible for the rest of the ISP community to review and comment on the exact financial details of these ground-breaking agreements.

First, I would like to comment on the One-Size-Fits-All –ISPs Open Access issue. As I review the available 10Q financial information on Earthlink and Juno for the latest quarter, I notice that each of these publicly traded companies has been punished severely by the stock and bond markets. In particular, Earthlink has seen 88% (its high was \$65.00 a share and its current price is \$7.75) of its market value disappear over the last 7 or eight months; and, Juno has seen over over 95% (its high was \$87.00 a share and its current price is \$2.56) of its market value disappear. Also, the junk bond market for ISPs has dried up. Consequently, Earthlink and Juno are not exactly well positioned to drive a hard bargain at the negotiation table.

Additionally, Earthlink has seen its value per subscriber shrink to \$246.00; and, Juno has seen its value per subscriber shrink to \$38.00, both of which are well under AOL's current value per subscriber of \$400.00. Is it any wonder that Earthlink and Juno would be interested in entering a agreement that would effectively make them into a franchisee of AOL/Time-Warner? The harsh financial reality is that any Open Access agreement with Earthlink and Juno could be a prelude to them being bought up at a steep discount by AOL/Time-Warner at a later date. In each case, AOL/Time-Warner could swallow the national ISP with their spare change.

Even if other ISPs like MSN are better financed, the national ISPs business model is different, because it includes significant revenue streams from advertising and e-commerce. For most small and regional ISPs, advertising and e-commerce revenues are virtually non-existent. For us, the wholesale rate we would be required to pay AOL/Time-Warner cannot be offset by other revenues. Also, the \$50,000 deposit requested by the Time-Warner Term Sheet is not a barrier to entry for national ISPs; on the other hand, it would be an enormous barrier for smaller ISPs.

Finally, the problem of secret negotiations cannot be understated, especially in light of the two voices of AOL/Time-Warner. The Public Relation voice is saying that AOL/Time-Warner supports Open Access to other ISPs; and, the Wall Street voice, personified by new President Robert Pittman, is saying that the merged company will pursue a strategy of "relentless linkage" and The Industry Standard's magazine cover for October 30, 2000 screams "Big, Bad AOL." In another example, the Public Relation voice asked ISPs to request for access to their cable on July 29, 2000; and, the Wall Street voice sent out an anti-competitive Term Sheet on August 11, 2000 to all ISPs that responded that PR voice. If anything is apparent now, it is that AOL/Time-Warner has entirely lost of its credibility.

In the current state of secret negotiation, most ISPs are asking the following questions:

- How long will the Earthlink access agreement remain secret?
- Does the new Term Sheet resemble the old one?
- Will ISPs be able to provide alternative, not Time-Warner, content?
- Who will have control of the set-top box in the consumer's home?
- Does Non-Discriminatory Open Access include Interactive Television?
- Will ISPs be able to provide broadband cable to the business community?
- Can multiple small ISPs form partnerships for Time-Warner access?

- Does the Earthlink/Time-Warner agreement become the definitive business model for “non-discriminatory open access?”
- Do small and medium sized ISPs have the opportunity to provide input into final shape of the Open Access business model?

With so much at stake for competitors and consumers, I am asking you at the FTC and FCC to accept your responsibility for designing a national telecommunication policy for the next twenty-five years. It may be more important than who wins this presidential election. Furthermore, if the Telecommunication Act of 1996 was written to protect the consumer and competition from large corporate interests, then the “telecommunication service” provided by AOL/Time-Warner deserves the same level of FTC and FCC involvement. How could you do any thing less?

Time Warner Term Sheet for ISP/TWC Broadband ISP Service

This term sheet (the "Term Sheet") is a list of key business points that are intended to be memorialized in a definitive agreement (the "Definitive Agreement") between Time Warner Cable ("TWC") and the Internet Service Provider (the "ISP") identified below. Except for the provisions of Section 21 of this Term Sheet, this Term Sheet is not intended to create any rights for, or impose obligations upon, either party including without limitation any obligation to negotiate in good faith.

1. Service

The "Service" will be ISP's Internet access, content, applications and functionality delivered over TWC's broadband cable infrastructure, as jointly provided by the parties within the Network Architecture to be specified by TWC in the Definitive Agreement. The Service will be tiered based on a maximum line speed and overall consumption of bits per billing period. Initially, the parties will offer two tiers of Service. The maximum line speeds for the lower tier Service will be 2mbps, downstream, and 384 kbps, upstream. Line speeds for the initial higher tier of Service, and bit consumption for both initial tiers of Service will be specified in the Definitive Agreement. Following execution of the Definitive Agreement, the parties may modify the foregoing service specifications and/or add service levels solely upon mutual agreement..

The Service will be optimized for the personal computer, but the parties understand that the Service may be capable of working on another device if so connected by a customer. TWC's obligations under the Definitive Agreement will be limited to a customer's use of the Service through a personal computer.

2. Non-Exclusive. The parties' rights and obligations under the Definitive Agreement will be non-exclusive.

3. Scope and Rollout. The rollout of the Service will be on a TWC divisional level, except with respect to the National Division, for which rollout will be on a cable system by cable system level (Each division, and in the case of the National Division, each system, may be referred to herein as an "Operator"). Each Operator will have the option (but not the obligation) to rollout the Service to potential customers in its operating area, subject to ISP's agreement to offer the Service through such Operator and

subject also to ISP's payment of the Advance (as defined herein) with respect to each Operator that offers the Service Rollouts will occur 30 days after the Operator determines that its cable systems are capable of providing the Service. TWC will have the right to terminate the Definitive Agreement with respect to Operators which are divested or are no longer under management by TWC. Systems which are acquired by TWC after the effective date of the Definitive Agreement but during the term thereof will have the option to offer the Service under the terms of the Definitive Agreement.

4. Distribution. Each of ISP and TWC will sell the Service and will determine the pricing of the Service when sold by it.

5. Subscriber Revenue Splits. TWC shall retain seventy-five percent (75%) of gross Service subscription revenues and ISP shall receive twenty-five percent (25%) thereof. Notwithstanding the foregoing, for subscriptions to the lower tier Service: (a) TWC shall receive a minimum monthly payment of \$30 for each subscription sold by ISP to existing TWC cable television service subscribers; and (b) ISP shall receive a minimum monthly payment of \$10 for each subscription sold by TWC. TWC shall be entitled to higher minimum monthly payments, specified in the Definitive Agreement, with respect to subscriptions sold by ISP to customers who are not TWC cable television service customers.

6. Service Home Page. ISP will have sole control of, and responsibility (including without limitation editorial and technical responsibility) for the homepage for the Service, provided however that: (a) the home page will be subject to TWC's approval; and (b) at all times during the term of the Definitive Agreement there will be a dedicated availability of prominent above-the-fold areas on the home page of the Service for use by the Operator in its discretion, but which may, without limitation link to content, applications, services and functionality provided by such Operator. The Operator presence on the home page for the Service shall be defined in the Definitive Agreement.

7. Advertising and Other Fees. TWC will receive twenty-five percent (25%) of gross revenues received by ISP for advertising, transactions, communications, premium services, e-commerce and other fees (e.g. web hosting surcharges) related to ISP's ability to offer the Service ("Ancillary Revenues"). Except as expressly set out in this Term Sheet, all revenues generated by the Operator in connection with the Service and whether or not through the Service Home Page (including advertising,

transactions, communications, premium services, e-commerce and other fees and service revenues) will be retained by TWC.

8. Advance. ISP will pay TWC an advance payment to be recouped against revenues to be received by TWC under the Definitive Agreement in the amount of dollars (\$____) for each Operator which the parties agree shall offer the Service (the "Advance"). The Advance will be due and payable thirty (30) days following ISP's receipt of notice from TWC that the Pre-Existing Obligations have terminated. The Advance will be applied to revenues due to TWC hereunder until such advance had been fully recouped, at which time TWC and ISP shall make appropriate payments as set forth herein. The advance is refundable upon expiration of the Agreement, provided however that in the event the Definitive Agreement terminates for any reason before TWC has earned at least \$50,000. TWC will be entitled to retain an amount equal to the difference between \$50,000 and the actual amounts earned by TWC under the Definitive Agreement.

9. Minimum Subscriber Level. TWC will have the right to terminate the Definitive Agreement with respect to any particular Operator after one year from the commencement of rollout by such Operator unless the Service has, upon the one-year anniversary of the rollout, in such Operator's operating area, a number of subscribers equal to the greater of (a) 100 or (b) .5% of homes passed by the particular Operator.

10. Marketing and Service Packages. ISP will market and promote the availability of the Service. TWC may package the Service with TWC's other services, subject to the terms and conditions of the Definitive Agreement, including without limitation the payment of minimum fees.

11. Facilities.

TWC will be responsible for all aspects of the Service infrastructure facilities from a point of demarcation at the Operator headend to Service subscribers. TWC will provision and install (except to the extent that self-provisioning is available) the Service for users using personal computers to utilize the Service.

Whichever party sells the Service to a customer will determine whether it wishes to charge an installation fee. Notwithstanding the foregoing, if ISP sells the Service, ISP will reimburse TWC, at TWC's cost without markup, for TWC's direct costs (including labor and equipment) of provisioning and installing the Service.

ISP will be responsible for all aspects of the Service, infrastructure facilities, software, hosting, caching, peering and general Internet connectivity and transport to the point of demarcation at the Operator headend. ISP's transport facilities to the TWC headends will meet maximum and minimum capacity specifications as will be specified in the Definitive Agreement. If tunneling protocols are used, the tunnels will terminate at TWC headend. ISP will be responsible for obtaining and managing blocks of IP addresses to support the Service.

The Definitive Agreement will set forth minimal technical performance requirements with which the ISP must comply. The Definitive Agreement will provide for appropriate credits for Service outages caused by failure of either party's facilities to meet specifications. If outages or performance failures reach a specified level, or if the ISP does not respond reasonably to increased volume or usage of the Service in any particular operating area, TWC may terminate the Definitive Agreement with respect to the Operators in such areas.

12. Billing and Customer Service.

TWC will invoice the customers to which it sells the Service. ISP shall have the option to invoice customers to which it sells the Service, or to have TWC invoice such customers at a monthly billing charge payable by ISP of \$.50 per Service subscriber invoiced. The invoicing party will remit payment to the other party for the other party's share of subscriber revenues no later than 30 days after the end of month in which such revenues were received from Service customer. If a TWC invoiced customer pays only a partial payment, the payment will be allocated proportionately among the Service and other TWC services, with TWC remitting twenty-five percent (25%) of the amount allocated to the Service to ISP (subject to minimum payments as set forth herein). TWC will have sole discretion over Subscriber termination policies, including without limitation for non-payment. ISP will remit to payment to TWC for TWC's share of Ancillary Revenues no later than 30 days after the end of the month in which ISP received such revenues.

The Definitive Agreement will define "Tier I" and "Tier II" issues. Each party will handle any Tier I calls or emails directed to it, with a handoff to the other party if necessary. ISP will handle Tier II customer service, except that TWC will handle Tier II customer service for those aspects of the service and facilities TWC is responsible for providing.